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**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503**

February 22, 1985

# SPECIAL

LEGISLATIVE LIAISON  
85-0584

## **LEGISLATIVE REFERRAL MEMORANDUM**

TO: Legislative Liaison Officer-

Central Intelligence Agency  
National Security Council  
Department of Defense  
Department of Justice

## Record

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**SUBJECT:**

State draft report on S. 12, the "Foreign Surveillance Prevention Act of 1985."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than  
TUESDAY, MARCH 12, 1985.

Questions should be referred to T.Lawler/S.Thau ( 395-7300 )  
the legislative analyst in this office.

*Ronald K. Peterson*  
RONALD K. PETERSON FOR  
Assistant Director for  
Legislative Reference

## Enclosures

cc: S. Dotson

J. Barie

A. Donahue

C. Kolb

CHAP. 21.

United States Department of State



Washington, D.C. 20520

FEB 13 1985

Dear Mr. Stockman:

In accordance with established procedure, there is transmitted herewith a proposed report on S. 12, a bill "to protect communications among Americans from interception by foreign governments, and for other purposes."

Please inform the Department whether there is any objection to the submission of this report.

Sincerely,

Robert F. Turner  
Acting Assistant Secretary  
Legislative and Intergovernmental Affairs

The Honorable  
David A. Stockman, Director,  
Office of Management and Budget.

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99TH CONGRESS  
1ST SESSION

**S. 12**

To protect communications among Americans from interception by foreign governments, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 3, 1985

Mr. MOYNIHAN introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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**A BILL**

To protect communications among Americans from interception by foreign governments, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       SECTION 1. That this Act may be cited as the "Foreign  
4       Surveillance Prevention Act of 1985".

5       SEC. 2. The Congress finds that—

6           (1) the widespread use of electronic surveillance  
7       and the interception of telecommunications by foreign  
8       governments pose a serious threat both to the national  
9       security of the United States and to the rights of priva-

1       cy and association guaranteed to Americans by the  
2       Constitution;

3                     (2) that such electronic intelligence activities by  
4       foreign governments have been, and are being, carried  
5       on under the guise of normal diplomatic relations with  
6       the United States; and

7                     (3) that the President of the United States, consti-  
8       tutionally charged with the conduct of the Nation's for-  
9       eign relations and with the protection of the Constitu-  
10      tion of the United States, has the primary responsibil-  
11      ity to protect the rights and interests of American citi-  
12      zens as they may be jeopardized by the electronic en-  
13      telligence activities of foreign powers.

14     SEC. 3. Whenever the President of the United States  
15    has reason, based upon information in his possession, to be-  
16    lieve that in any State of the United States, the District of  
17    Columbia, the Commonwealth of Puerto Rico, or any terri-  
18    tory or possession of the United States, any individual on  
19    whom diplomatic immunity has been conferred by the United  
20    States, is willfully engaging in electronic surveillance on  
21    behalf of a foreign power, the President shall—

22                     (a) so inform the chairman and ranking minority  
23       member, or, in his discretion, the members of the Com-  
24       mittee on the judiciary of the House of Representa-  
25       tives, the Committee on the Judiciary of the Senate,

1       the Select Committee on intelligence of the Senate,  
2       and the Select Committee on Intelligence of the House  
3       of Representatives;

4                 (b) so inform those persons, if any, reasonably be-  
5       lieved to be particular targets of such surveillance in  
6       order that they may take such precautions as they con-  
7       sider advisable, unless he shall determine that to do so  
8       would seriously compromise sources or methods of in-  
9       telligence gathering by the United States;

10                 (c) so inform the Ambassador or Charge d'Affairs  
11       or other representative of such foreign power, and shall  
12       demand that such foreign power immediately cease  
13       such surveillance, unless he shall determine that to do  
14       so would seriously compromise sources or methods of  
15       intelligence gathering by the United States; and

16                 (d) thirty days after such demand is made, if the  
17       electronic surveillance has not ceased, declare such in-  
18       dividual to be persona non grata in the United States,  
19       and shall demand that he leave the United States im-  
20       mediately, unless the President shall determine that to  
21       do so would cause serious damage to the national secu-  
22       rity of the United States.

23       **SEC. 4. DEFINITIONS.—As used in this Act—**

1                 (a) "electronic surveillance" means the interception  
2                 of wire or radio communications through the use  
3                 of any electronic, mechanical, or other device;

4                 (b) "wire or radio communication" means any  
5                 communication made in whole or in part through the  
6                 use of facilities for the transmission of communications  
7                 by the aid of wire, radio, cable, or other like connection  
8                 between the point of origin and the point of reception  
9                 furnished or operated by any person engaged as a  
10                 common carrier in providing or operating such facilities  
11                 for the transmission of interstate or foreign communications;

13                 (c) "person" means any individual, partnership,  
14                 association, joint stock company, trust, or corporation;

15                 (d) "electronic, mechanical, or other device"  
16                 means any device or apparatus which can be used to  
17                 intercept a wire or radio communication other than any  
18                 telephone or telegraph instrument, equipment or facility,  
19                 or any component thereof, furnished to the subscriber or user by a communications common carrier in  
20                 the ordinary course of its business and being used by  
21                 the subscriber or user in the ordinary course of its  
22                 business;

24                 (e) "foreign power" means—

- 1                   (i) a foreign government or any component  
2                   thereof, whether or not recognized by the United  
3                   States;
- 4                   (ii) a faction of a foreign nation or nations,  
5                   not substantially composed of United States per-  
6                   sons;
- 7                   (iii) an entity, which is openly acknowledged  
8                   by a foreign government or governments to be di-  
9                   rected and controlled by such foreign government  
10                  or governments;
- 11                  (iv) a foreign-based political organization, not  
12                  substantially composed of United States persons;  
13                  or
- 14                  (v) an entity which is directed and controlled  
15                  by a foreign government or governments; and
- 16                  (f) "common carrier" shall have the same  
17                  meaning which is given the term by section  
18                  153(h) of title 47 of the United States Code.

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